

ARDC No. 6276278

3007042-MJM/CMK

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**THOMAS LAYBURN and
CINDY LAYBURN,**

Plaintiffs,

vs.

HYD MEC GROUP LIMITED,

Defendant.

No. 08 CV 2876

MOTION FOR INSPECTION AND PRESERVATION OF EVIDENCE

NOW COMES Defendant HYD-MECH GROUP LIMITED, by its attorneys SmithAmundsen LLC, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and in support of this motion, states as follows:

1. The plaintiff in this case alleges that he was injured on November 21, 2007 at Crucible Service Centers, his place of employment, in Romeoville, Illinois, while using a HYD-MECH steel cutting saw, model number H22A.
2. Counsel for Crucible Service Centers has indicated to counsel for Hyd-Mech Group Limited that Crucible Service Centers intends to file a motion to intervene in this matter. A similar motion was filed by Crucible Service Centers in state court prior to this matter being removed to federal court.
3. Counsel for plaintiff has indicated that plaintiff suffered amputated injuries to a hand.

4. Plaintiff in Count I charges that HYD-MECH Group Limited should be strictly liable for this injury because the HYD-MECH H22A steel cutting saw was unreasonably dangerous and proximately caused injury to the plaintiff.

5. As such, the HYD-MECH H22A steel cutter in its current condition constitutes relevant and material evidence at the trial of this case. If it is not made available by Crucible Services for inspection, this defendant's defense will be compromised.

6. Counsel for Hyd-Mech has served a subpoena upon Crucible Services for the inspection of the steel cutter at issue.

7. However, any modification, alteration, destruction or change to the current condition of the steel cutter at issue from now until trial will also compromise this defendant's defense.

7. On information and belief, Crucible Services has already modified the steel cutter at issue from the date of incident alleged in plaintiff's complaint to present. This defendant's defense will also be hampered by the destruction or unavailability of documents relating to the steel cutter's modifications, changes, maintenance, and operations from the date of incident alleged by plaintiff to present.

WHEREFORE, this defendant prays that this Court order that the steel cutter at issue be made available for inspection within the next 7 days, further that all parties, their attorneys, agents, and the plaintiff's employer Crucible Service Centers refrain from using, selling, loaning, trading, destroying, diminishing, changing, modifying, altering or otherwise disposing of the steel cutter at issue without further order of Court during the pendency of this

litigation, and that the current custodian of this steel cutter take the appropriate measures now to preserve the steel cutter until this litigation concludes. This defendant further prays that the Court order Crucible Service Centers to retain all records regarding the steel cutter's use, maintenance, modifications and changes that are currently in its possession, and make the same available for inspection by defendant within the time period stated above.

Respectfully submitted,

SmithAmundsen LLC

By: /s/ Camille M. Knight
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